SUPREME COURT OF THE UNITED STATES.

No. 230.—October Term, 1925.

New York Central Railroad Company and Pennsylvania Railroad Company, Plaintiffs in Error, *vs.* New York and Pennsylvania Company.	In Error to the Supreme Court of the State of Pennsylvania.

[April 26, 1926.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a suit brought in a court of Pennsylvania to recover the amount of alleged excess charges paid by the defendant in error for the carriage of coal in commerce within the State, and ordered by the Public Service Commission of Pennsylvania to be repaid by way of reparation. A judgment on the order in favor of the defendant in error was affirmed by the Supreme Court of Pennsylvania. 281 Pa. 257. The charges in question were for shipments between March 1, 1920, and September 1, 1920, the six months following the termination of federal control of the railroads. The rates charged were those that were in effect on February 29, 1920. By § 208(a) of the Transportation Act, 1920, (February 28, 1920, c. 91; 41 Stat. 456, 464) prior to September 1, 1920, no such rate could be reduced unless the reduction was approved by the Interstate Commerce Commission, the six months concerned being the period during which the United States guaranteed certain income to the railroads by § 209. The Interstate Commerce Commission has not approved any reduction and therefore it is plain that the State Commission had no authority to intermeddle with the rates that it undertook to cut down. It is true that regulating rates and awarding reparation are different matters. But the prohibition in the statute covers either method of reducing the pay received by the roads. The language of the statute and the reasons for the enactment too clearly apply to intrastate as well as to interstate rates, to admit debate. *Missouri Pacific R. R.*

Co. v. *Boone,* March 22, 1926. Whether the rates were right, or were wrong as the State Court thinks, they could be changed only in one way.

It may be that some of the questions before us would be proper matters for a writ of error, but as the rights asserted under the statute of the United States are more fully open upon a writ of certiorari we shall consider the case upon the last mentioned writ.

The State Courts were of opinion that the plaintiffs in error had waived their rights by their failure to appeal from a decision on an earlier complaint to the State Commission in which that Commission held that a lower rate was reasonable and stated that upon presentation of a petition accompanied by the supporting data reparation would be awarded for freight charges paid in excess of the rates thus fixed. Whether the federal rights asserted were lost in this way is open to examination here. *Creswill* v. *Grand Lodge Knights of Pythias,* 225 U. S. 246. *Ward* v. *Love County,* 253 U. S. 17, 22. *Davis* v. *Wechsler,* 263 U. S. 22, 24.

In our opinion the failure to appeal from the former order is no bar. We do not undertake to review the decision of the Supreme Court as to state procedure, but if the Railroads were too late to argue their case before that Court they are not too late to argue it here. There was no order in the former hearing before the State Commission that the Railroads could have brought before us. This is the first moment when they have had a chance to raise what we regard as a perfectly clear point, as it is the first moment when their rights have been infringed. There now is an order which is in the teeth of the statute. It would not be reasonable to hold that they are precluded from getting the protection that this Court owes them, by their having failed to go as far as they now learn that they might have gone in a previous state proceeding which did not infringe their rights and which could not be brought here. "The judgment under review was the only final judgment . . . from which plaintiff in error could prosecute a writ of error, and until such final judgment the case could not have been brought here for review." *Chesapeake & Ohio Ry. Co.* v. *McCabe,* 213 U. S. 207, 214. *Smith* v. *McCullough,* March 22, 1926.

Writ of certiorari granted.
Writ of error dismissed.
Judgment reversed.

Mr. Justice SUTHERLAND took no part in the consideration or decision of this case.